IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 348 of 2004.

Reserved on: 24.4.2007.

Decided on: 18.05. 2007.

State of H.P. & Another.

… … … Petitioners.

Versus

Balam Ram & Others.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the petitioners: **Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi Sharma, Deputy Advocates General.**

For Respondents No.2&3: **Mr. R.D. Kaundal, Advocate.**

Rajiv Sharma, Judge:

By way of this petition, the State has challenged two orders, dated 3.12.2002 passed by the Controlling Authority (under the Payment of Gratuity Act, 1972), Mandi Zone, Mandi, H.P. and the appellate order passed on 22.11.2003.

The brief facts necessary for adjudication of this petition are that the respondent No.1 (hereinafter referred to as the

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Whether reporters of local papers may be allowed to see the judgment? No.

workman for convenience) had approached the Controlling Authority for the payment of gratuity as per the provisions of Payment of Gratuity Act, 1972. The Controlling Authority had directed the Executive Engineer, Irrigation and Public Health Division, Paddar on 3.12.2002 to pay the workman the gratuity amounting to Rs.33,284/-. The Superintending Engineer feeling aggrieved by the order dated 3.12.2002 had preferred an appeal before the Appellate Authority. The Appellate Authority had modified the order dated 3.12.2002 and has directed that the workman will be entitled to Rs.53,683/-.

Mr. M.S. Chandel, learned Advocate General has contended that the orders passed by the Controlling Authority and the Appellate Authority are not sustainable in the eyes of law. Mr. R.D. Kaundal appearing on behalf of respondents No.2 and 3 has supported the orders passed by the Controlling Authority and the Appellate Authority dated 3.12.2002 and 22.11.2002 respectively.

The sole contention of Mr. Advocate General is that the Controlling Authority as well as the Appellate Authority cold not taken into consideration the period the workman was engaged on daily wages basis, i.e. w.e.f. November, 1972 to 6/90 and thereafter the workman was brought on work charge establishment as fitter w.e.f. 15.6.1990 till the date of his superannuation, i.e. 30.11.1995. This question whether the period when the workman is employed on daily wages basis is to be taken into consideration

or not, has been considered by this Court in **State of H.P. versus Lashkari Ram, CWP No.150 of 2004** decided on 9th May, 2007.

This Court has come to the conclusion so far as the period when the workman was engaged on daily wages basis is concerned, the same is to be considered for the payment of gratuity under the Payment of Gratuity Act, 1972 and the regular period is to be counted under the provisions of CCS (Pension) Rules, 1972.

Accordingly, this petition is disposed of with the following directions:-

(i) The workman is entitled to get the gratuity for the period w.e.f. November, 1972 to 6/90 under the Payment of Gratuity Act, 1972 with interest as per law laid down by the Hon'ble Supreme Court in H. Gangahanume Godwa versus Karnataka Agro Industries Corpn. Ldt. (2003) 3 SCC 40;

(ii) The workman is held entitled and is to be paid the gratuity w.e.f. 15.6.90 to 30.11.1995 (regular period) under the CCS (Pension) Rules, 1972 with interest @ 9% per annum. The copy of the judgment be sent to the Secretary, Labour & Employment for its distribution to the Controlling as well as Appellate Authority constituted under the Payment of Gratuity Act, 1972.

The aforesaid directions be complied with by the State within a period of one month from today.

(Rajiv Sharma)
Judge

May18, 2007
(sck).